

unless a party timely appeals the determination in accordance with § 26.26. The determination shall inform the parties that, if provided for and consistent with Departmental regulations, any party may request, in writing, Secretarial review of the determination within 30 days after the hearing officer issues the determination, in accordance with § 26.26 of this part. The determination shall include the mailing address, facsimile number, and electronic submission information to which the request for Secretarial review should be sent. A request for Secretarial review may be made by mail, delivery, facsimile, or electronic submission.

SECRETARIAL REVIEW

§ 26.26 Review of determination of hearing officers.

(a) Except in matters arising under 2 CFR part 2424, any party may file with the Secretary an appeal within 30 days after the date that the hearing officer issues a determination or order. The Secretary or designee may extend the 30-day period, in the Secretary's sole discretion, for good cause.

(b) *Brief in support of appeal.* The appeal shall be accompanied by a written brief, not to exceed 15 pages, setting forth the party's specific objections to the determination or order of the hearing officer and the party's supporting reasons for any objections. The appealing party may request leave to file a brief in excess of 15 pages for good cause shown. Alternative proposed findings and conclusions, if any, may be appended as an exhibit.

(c) *Briefs in opposition.* Any opposing party may submit a brief in opposition to the appeal, not to exceed 15 pages, within 20 days of receiving a copy of the appeal and accompanying brief. The opposing party may request leave to file a brief in excess of 15 pages for good cause shown. The brief in opposition shall specifically state the opposing party's reasons for supporting the hearing officer's determination, or for objecting to any part of the hearing officer's determination.

(d) *Service.* The appeal and all briefs shall be served on all parties and on the Docket Clerk.

(e) *Forwarding of the record.* Upon request by the Office of the Secretary, the hearing officer shall forward the record of the proceeding to the Secretary or the Secretary's designee.

(f) *Time extensions.* The Secretary, or designee, in his or her sole discretion, may extend the deadlines or page limitations set forth in paragraphs (b) and (c) of this section. The Secretary or designee may also permit the filing of additional briefs, in his or her sole discretion.

(g) *Personal appearance.* There is no right to appear personally before the Secretary or designee.

(h) *Interlocutory rulings.* There is no right to appeal any interlocutory ruling by the hearing officer, except as provided for in § 26.27.

(i) *Objection not raised before hearing officer.* In reviewing the determination or order, the Secretary, or designee, shall not consider any objection that was not raised before the hearing officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(j) *Evidence in the record.* The Secretary or designee shall consider only evidence contained in the record forwarded by the hearing officer. However, if any party demonstrates to the satisfaction of the Secretary or designee that additional evidence not presented at the hearing is material, and that there were reasonable grounds for the failure to present such evidence at the hearing, the Secretary or designee shall remand the matter to the hearing officer for reconsideration in light of the additional evidence.

(k) *Ex parte communications.* The prohibitions of ex parte communications in § 26.3 shall apply to contacts with the Secretary or the Secretary's designee.

(l) *Determination.* The Secretary or designee may affirm, modify, reverse, remand, reduce, compromise, or settle any determination made or action ordered in the initial determination or order. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(m) *Written determination.* Where a request for Secretarial review has been

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timely made, the Secretary, or designee, shall issue a written determination within 30 days after receipt of the request for review, and shall serve it upon the parties to the hearing and the hearing officer. The Secretary, or designee, may extend the time in which a written determination must be issued by an additional 60 days for good cause shown in a written justification issued to the parties. The written determination of the Secretary shall be final. If the Secretary, or designee, does not act upon the request for review of a determination within 90 days of service of the request, then the initial determination shall be the final agency action.

§ 26.27 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within 10 days of the ruling requesting certification of the ruling for review by the Secretary, or in cases arising under 2 CFR part 2424, with the Debarring Official. Certification may be granted if the hearing officer believes that:

(1) It involves an important issue of law or policy as to which there is substantial ground for difference of opinion; and

(2) An immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within 10 days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, or Debarring Official shall review a certified ruling. The Secretary, designee, or Debarring Official has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, designee, or Debarring Official, the hearing shall proceed pending the determination of any interlocutory appeal, and the order or ruling of the hearing officer shall be effective pending review.

24 CFR Subtitle A (4–1–10 Edition)

Subpart B—Hearings Pursuant to the Administrative Procedure Act

§ 26.28 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*)

§ 26.29 Definitions.

The following definitions apply to subpart B of this part:

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an Administrative Law Judge.

Docket Clerk means the Docket Clerk of the Office of Administrative Law Judges, located at the following address—409 Third Street, SW., Second Floor, Washington, DC 20024; mailing address is 451 7th Street, SW., Room B-133, Washington, DC 20410.

Respondent, unless otherwise identified by other governing statute, rule, or regulation, is the party against whom the administrative action is taken.

Response means the written response to a complaint, admitting or denying the allegations in the complaint and setting forth any affirmative defense and any mitigating factors or extenuating circumstances. The response shall be submitted to the division of the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.30 Service and filing.

(a) *Filing.* Unless otherwise provided by statute, rule, or regulation, all documents shall be filed with the Docket Clerk. Filing may be by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means; however, the ALJ may place reasonable limits on filing by facsimile transmission or electronic means. All